

Decision 02-04-009 April 4, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Alameda County  
Transportation Authority for an order  
authorizing the reconstruction of a crossing at  
separated grades between the Route 238 (Mission  
Blvd.) widening and the tracks of the Union  
Pacific Railroad Company sometimes referred to  
as the "South Niles Underpass." (PUC No. 004-  
30.40-B)

Application 01-10-006  
(Filed October 3, 2001)

## **O P I N I O N**

The Alameda County Transportation Authority (ACTA) requests authority to reconstruct a crossing at the existing separated grade for State Route 238 (Mission Blvd.) below the tracks of the Union Pacific Railroad Company (UP) in the City of Fremont, in Alameda County. The proposed railroad underpass will widen State Route 238 at this location to a total of six lanes at PUC Crossing Number 004-30.40-B and will be referred to as the South Niles Underpass.

The original application contained a typographical error in the caption of the application. The crossings were described correctly but the application caption referred to the crossing number as "PUC No. 001D-30.4B." The correct number is "PUC No. 004-30.40-B." The caption of the proceeding is corrected accordingly.

The section of State Route 238, which includes the South Niles Underpass, is a major urban arterial extending from Interstate 580 in the Hayward/Castro Valley to Interstate 680 in Fremont. The overall project will widen State Route

238 to accommodate six lanes from south of Mowry Avenue (Route 84) to north of Niles Canyon Road (Route 84). Additional left- and right-turn lanes will be added. A map of the project vicinity is set forth as Appendix B in the application.

The proposed underpass structure will carry the UP's main line tracks across a depressed Route 238 by means of a steel plate through girder structure. The total length of structure along the railroad will be about 147.6 feet, measured back-to-back of abutments. Abutments and bent caps will be reinforced concrete supported on spread footings. There will be no temporary or permanent impaired clearances for railroad traffic.

California Department of Transportation (Caltrans), acting by and through the California Transportation Commission, is the lead agency for this project under the California Environmental Quality Act of 1970 (CEQA), as amended, Public Resource Code Section 21000 et seq. After preparation and review of an Initial Study/Environmental Assessment (ISEA), on January 4, 1996, Caltrans filed a CEQA Notice of Determination with the State Clearinghouse. Caltrans filed a Negative Declaration and although the proposal could have a significant effect on the environment, there will not be a significant effect because mitigation measures have been added to the project.

The Commission is a responsible agency for this project under CEQA (Public Resources Code Section 21000 et seq.). CEQA Guideline Section 15050(b) requires that a responsible agency must consider the lead agency's Environmental Impact Report or Negative Declaration prior to acting upon or approving the project. The specific activities, which must be conducted by the responsible agency, are contained in CEQA Guideline Section 15096.

The Commission has reviewed and considered the lead agency's ISEA and Notice of Determination. The Negative Declaration included mitigation measures designed to help avoid significant impacts. Safety and security, transportation, and noise are within the scope of the Commission's permitting process.

Mitigation measures for the overall project include the replacement of wetlands. A wetland mitigation plan will be developed which will include provisions to monitor the mitigation site following construction. Households and businesses displaced by the project will be provided relocation assistance under the State's Uniform Relocation Assistance Program to enable them to relocate successfully. The Vallejo Mills site would be visually impacted by construction of sound walls along Mission Blvd., requiring design and construction monitoring by cultural resource specialists.

Although the project would not result in significant noise impacts, noise abatement is proposed. Noise walls are proposed along the west side of Mission Blvd. near its intersection with Niles Canyon Road. Noise walls are also proposed along the east side of Mission Blvd. near the Whipple Road intersection.

The ISEA submitted was for the entire Route 238 (Mission Blvd.) Spot Improvement Project in Hayward, Union City, and Fremont in Alameda County. There would be no significant adverse effects on noise, air quality, energy consumption, land use and growth, visual and aesthetic qualities, plant and animal life, threatened and endangered species.

Additionally, there will be no effect on schools, neighborhoods, recreational facilities including parks and open space, timberlands, agriculture, industry, employment, the economy or topography.

This proposed project involves reconstruction of an existing grade separation. We note that Public Resources Code Section 21080.13 provides an exemption from CEQA of “Any railroad grade separation project...which reconstructs an existing grade separation...” In this instance, rather than granting exemption, Caltrans performed environmental review and adopted mitigation measures to address environmental impacts and areas of concern which it found to be significant. We find the adopted mitigations to be reasonable and feasible, and adopt Caltrans’ findings for purposes of our approval of the proposed project.

The site of the proposed project has been inspected by the Commission’s Rail Safety and Carriers Division (RSCD) Rail Crossing Engineering staff. The staff examined the need for and safety of the proposed crossing and recommends that the sought authority be granted.

Application 01-10-006 meets the filing requirements of the Commission’s Rules of Practice and Procedure, including Rule 39, which relates to the widening of an existing crossing.

In Resolution ALJ 176-3074 dated October 26, 2001, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. The Commission’s RSCD recommends that this application be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations made in Resolution ALJ 176-3074.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

**Findings of Fact**

1. Notice of the application was published in the Commission's Daily Calendar on October 16, 2001. No protests have been filed.
2. ACTA requests authority, under Public Utilities Code Sections 1201-1205, to reconstruct a separated grade below the tracks of the UP identified as South Niles Underpass, PUC Crossing Number 004-30.40-B.
3. Public convenience and necessity require the reconstruction of the separated grade on the South Niles Underpass in Alameda County.
4. Caltrans, acting by and through the California Transportation Commission, is the lead agency for this project under CEQA, as amended.
5. Caltrans filed a Negative Declaration that included mitigation measures.
6. The Commission is a responsible agency for this project and has reviewed and considered the lead agency's ISEA and Notice of Determination.
7. The Commission finds the lead agency adopted reasonable mitigation measures to eliminate or substantially lessen the environmental impacts identified in Caltrans' environmental review and we adopt these mitigations for purposes of our approval.

**Conclusions of Law**

1. The application is uncontested and a public hearing is not necessary.
2. The application should be granted as set forth in the following order.

**O R D E R**

**IT IS ORDERED** that:

1. The caption of this proceeding is corrected to reflect the correct PUC Crossing Number as "PUC No. 004-30.40-B."

2. The Alameda County Transportation Authority (ACTA) is authorized to reconstruct a crossing at separated grades between the Route 238 (Mission Blvd.) widening and the tracks of the Union Pacific Railroad Company (UP) at the location as shown on the plans attached to the application, to be identified as the “South Niles Underpass” PUC No. 004-30.40-B.

3. Clearances shall be in accordance General Order (GO) 26-D.

4. Walkways shall conform to GO 118. Walkways adjacent to any trackage subject to rail operations shall be maintained free of obstructions and shall be promptly restored to their original condition in the event of damage during construction.

5. Construction and maintenance costs shall be borne in accordance with an agreement to be entered into between the parties. A copy of the agreement shall be filed by ACTA with the Commission’s Rail Safety and Carriers Division (RSCD) prior to commencing construction. Should the parties fail to agree, the Commission will apportion the costs of construction and maintenance by further order.

6. Final construction plans, approved by Caltrans and UP, shall be filed by ACTA with RSCD prior to commencing construction.

7. ACTA will inform the RSCD Rail Crossing Engineering Section in writing within 30 days of the date of the completion of this project.

8. This authorization shall expire if not exercised within three years unless time is extended or if the above conditions are not complied with. Authorization may be revoked or modified if public convenience, necessity, or safety so require.

9. This application is granted as set forth above.

10. Application 01-10-006 is closed.

This order becomes effective 30 days from today.

Dated April 4, 2002, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
CARL. W. WOOD  
GEOFFREY F. BROWN  
MICHAEL R. PEEVEY  
Commissioners